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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.P., et al., Persons Coming Under the
Juvenile Court Law.

2d Civ. No. B206642
(Super. Ct. Nos. J1175054, J1175055)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,
v.

K.A.,

Defendant and Appellant.

K.A. appeals an order of the juvenile court terminating parental rights and finding her children adoptable. (Welf. & Inst. Code, § 366.26.)¹ She contends the juvenile court erred in failing to find the beneficial parent relationship exception (§ 366.26, subd. (c)(1)(B)(i)) applicable to the termination of parental rights and in failing to properly apply the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.). We affirm.

FACTS AND PROCEDURAL HISTORY

Respondent Santa Barbara County Child Welfare Services (CWS) filed a juvenile dependency petition on behalf of C.P. and T.P., ages 7 and 9 years, on April 26,

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

2006. The petition was based on a long history of neglect by their parents, appellant K.A. and R.P.,² and K.A.'s substance abuse. The history included an allegation of emotional abuse and two domestic violence incidents in 1995, and an allegation of severe neglect after both K.A. and her son C.P. tested positive for methamphetamine and marijuana at his birth in 1997. In December 2001, CWS was notified that the children were sleeping on the floor after K.A. allowed gangbangers to take over her home. Subsequently, CWS was contacted when K.A. and the children were living without electricity or water. CWS also was contacted when K.A. failed to pick up the children from school. Shortly before the petition was filed, K.A. was arrested for poaching mushrooms, trespassing and having an open container of alcohol. She served 30 days in jail. Soon after being released from jail, she was arrested for being under the influence of a controlled substance. At that time, she had no permanent address.

On April 28, 2006, the court detained the children and approved their placement with their paternal grandfather. In the detention report, CWS reported that K.A. said her mother was enrolled in the Coastanoan or Salinas Tribe of California. K.A. agreed to ask the tribe about her own eligibility and inform CWS of the tribe's response. CWS contacted the Salinas Tribe and was told that K.A.'s mother may be a member of a different tribe. The Salinas Tribe agreed to investigate further. CWS reported that neither tribe is identified on the roster of California Tribes or on the federal register of Native American Tribes.

As part of her case plan, K.A. was provided twice-weekly supervised visitation with the children at their grandfather's home. She also was required to enroll in a substance abuse program and parenting classes. On June 13, 2006, a CWS social worker met with K.A. and explained to her the guidelines for visiting her children at the grandfather's home. The next day K.A. missed the scheduled visitation. She also failed

² R.P. is not a party to this appeal.

to enroll in a substance abuse program. Thereafter, CWS made several unsuccessful attempts to contact her, not succeeding in doing so until November 2006.

In the six-month status review report of November 16, 2006, CWS reported that, due to K.A.'s failure to contact CWS, it had little information concerning K.A.'s compliance with her case plan. The grandfather reported that she attended about half the scheduled visits with her children. The court ordered that K.A. be given six additional months of reunification services.

In the 12-month status review report prepared on May 17, 2007, CWS recommended that family reunification services be terminated and that the court set a 366.26 permanency hearing. The recommendation was based on K.A.'s failure to substantially comply with her case plan. She had not found a job. Compliance with her visitation schedule was erratic. According to the grandfather, she was often late, did not show up at all, left early or came on days when she was not scheduled. This pattern continued until visits were suspended in March 2007. The grandfather said that during the visits, K.A. acted appropriately.

The report also stated that K.A. was keeping appointments with the substance abuse counselor required by her probation and her drug tests were negative. Although K.A. said she was attending parenting classes and NA/AA meetings, she did not provide written verification. K.A. told CWS she did not have a home suitable for the children.

In an addendum report, CWS reported that K.A. attended supervised visits with her children on May 16 and May 28. CWS tried to contact her to arrange further visits but was unable to do so until June 13, 2007. On that day, K.A. contacted CWS and stated she had not attempted to visit her children in the interim.

On July 12, 2007, a contested 12-month review hearing was held. K.A. asserted that the CWS report was incorrect. She said she had obtained employment but did not have a scheduled start date. She stated she had attended seven parenting classes between October 2006 and the date of the hearing. She started a drug rehabilitation

program in March 2007 as a condition of her probation. She denied that she had not complied with the visitation schedule with her children and denied that she had an alcohol problem. At the conclusion of the hearing, the court ordered that services be continued because there was a substantial probability that the children could be returned to K.A. at the 18-month hearing scheduled for October 25, 2007.

The report prepared for the 18-month hearing, however, recommended that family reunification services be terminated and that a section 366.26 permanency hearing be set. In the report, CWS also reviewed the steps taken to determine whether the ICWA applied. The Bureau of Indian Affairs (BIA) was notified in June 2006. A return receipt showed that BIA had received the notice but did not respond. CWS had received no additional information from mother concerning Native American heritage. CWS requested that the court find ICWA did not apply.

The report stated the children were normal, well adjusted and thriving in their grandfather's home. K.A. had not visited the children for the past two and one-half months. CWS had been attempting to contact K.A. since August 2007 but had been unsuccessful. CWS did not know if K.A. had a suitable residence for the children. She had not complied with the supervised visitation schedule since July 31, but had been showing up unannounced at the children's sport practices.

K.A. sent a letter to the court on October 20, 2007, in which she stated she had been attending Coast Valley Substance Abuse Treatment Center since March 2007, meeting with her probation officer monthly, attending parenting classes, and had a residence.

In an addendum report, CWS responded to K.A.'s letter. She did not enroll in a substance abuse program in March 2007, although her case plan required that she do so in June 2006. When she enrolled in the program, she arrived later, rescheduled, and then cancelled 15 minutes past the appointment time. She continued this behavior until she was informed by the program that she had lost her opportunity to enroll. CWS

informed K.A. that she should enroll in an alternative approved treatment program. Before she enrolled in that program, however, she was arrested in February 2007.

After she was released from jail, K.A. enrolled in a program to comply with the terms of her probation. The program was not approved for her case plan because it did not require sufficient drug testing and only required once weekly attendance. K.A. did not comply with CWS's request to arrange for additional testing. Although required to attend parenting classes in the June 2006 case, she attended one class in December 2006 and one class in April 2007. Visitation with the children was sporadic and she had not contacted the grandfather at all between July 31, and September 27, 2007. CWS investigated the address K.A. provided as a residence. The residence was rented to another person who stated K.A. did not live there.

At the hearing on December 10, 2007, K.A. said she was unaware of many of the components of her case plan. She denied having a problem with alcohol. She said she did not attempt to schedule supervised visits with her children because she was content to watch them at their sports practices. She denied not being in contact with CWS between August 2, and October 27, 2007.

The court terminated reunification services and scheduled a 366.26 hearing. The court found that although K.A. had complied with some requirements of her case plan, she had failed to substantially comply with it. The court noted that she had done a little bit of everything, but had completed nothing. She had not established a suitable residence for the children. Her explanations for failure to comply were inconsistent and manipulative.

K.A. was not present at the 366.26 hearing on March 13, 2008, and her attorney submitted on her behalf. The court terminated her parental rights finding that the children were adoptable and the ICWA did not apply.

On appeal, K.A. asserts the court erred in terminating her parental rights because the beneficial relationship exception applies and the notice requirements of ICWA were violated.

DISCUSSION

Termination of Parental Rights

The court reviews the findings of the juvenile court under the substantial evidence test. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) This standard does not permit the reviewing court to reweigh the evidence or substitute its judgment for that of the juvenile court. (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)

The purpose of the section 366.26 hearing is to "provide stable, permanent homes for [dependent children]." (*Id.*, at subd. (b).) Adoption is the preferred permanent plan for dependent children. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1416.)

"Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child's best interests are other, less permanent plans, such as guardianship or long-term foster care considered." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 574.)

"When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

This rule is subject to five statutory exceptions. K.A. contends the beneficial relationship exception in section 366.26, subdivision (c)(1)(B)(i) applies. That section provides that parental rights shall not be terminated if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Ibid.*)

The parent bears the burden of proving the exception. Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) To meet her burden of proof, K.A. must show more than frequent and loving contact or pleasant visits. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) She must show she occupies a parental role in the

child's life, resulting in a significant, positive, emotional attachment from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) The juvenile court may reject a parent's assertion of the exception simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. (*Jasmine D.*, *supra*, at p. 1350.)

A parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or that the parental relationship may be beneficial to the child only to some degree. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The parent must also show that continuation of the parent-child relationship will promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

K.A. argues the judgment terminating parental rights was erroneous because a clear bond exists between her and her children. She asserts that the test of section 366.26, subdivision (c)(1)(B)(i)—whether mother maintained regular visitation and contact with the children and whether the children would benefit from the relationship—have been met in this case. We disagree.

The record shows that mother visited her children sporadically. Although mother acted appropriately when she did visit the children, and the children enjoyed the visits, these occasional visits did not overcome the substantial benefit the children received by living with their grandfather in a safe and stable environment.

K.A. also asserts that the children have been with her for most of their lives. While this factor is entitled to some weight, the record shows that during that time, K.A. neglected them. Even though the juvenile court gave mother several opportunities at rehabilitation and extended family services, mother failed to maintain sobriety for any length of time, failed to comply with any element of her case plan, failed to find full-time employment, and failed to establish a suitable residence for her children.

Mother relies on *In re Amber M.* (2002) 103 Cal.App.4th 681, to support her argument that the beneficial relationship exception applies. That case is distinguishable. In *Amber M.*, by the time of the 366.26 hearing, the mother had made serious efforts to control her drug abuse and stayed sober for lengthy periods, and had substantially complied with her case plan. In contrast, the record here shows that K.A. never enrolled in a substance abuse program meeting the requirements of her case plan, did not satisfactorily complete any other requirement of the plan, maintained only sporadic contact with the children, and blamed others for her failure to comply.

Substantial evidence supports the juvenile court's finding that adoption by their grandfather is in the best interests of the children.

ICWA

K.A. contends that termination of her parental rights must be reversed because the notice provisions of ICWA were violated.

ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and social services agencies have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 470.) For purposes of ICWA, an "Indian child" is one who is either a "member of an Indian tribe" or is "eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).)

K.A. told CWS that her mother was an enrolled member of the "Coastanoan" or "Salinas" Tribe. CWS correctly determined that the Coastanoan Band of Mission Indians is not a federally recognized tribe. (See 73 Fed. Reg. 18553 (Apr. 4, 2008).) The notice provisions of ICWA do not apply to federally non-recognized tribes. (See *In re A.C.* (2007) 155 Cal.App.4th 282, 286-287 [ICWA "does not require either the court or [the agency] to send notice to a tribe which is not federally recognized"].)

K.A. asserts that information provided by the "Salinas tribe" that K.A.'s mother might be a member of a different tribe triggered the ICWA notice provisions. The argument is without merit. ICWA does not require further inquiry based on mere supposition. (See, e.g., *In re Levi U.* (2000) 78 Cal.App.4th 191, 199 [the agency is not required to conduct an extensive independent investigation or to "cast about, attempting to learn the names of possible tribal units to which to send notices"].) K.A.'s argument that CWS should have provided BIA with information concerning K.A.'s maternal grandmother also is without merit. CWS contacted the tribe K.A. identified as her mother's heritage. The tribe is not federally recognized. There is no evidence whatsoever that K.A.'s maternal grandmother was enrolled in some other, federally recognized tribe. CWS fulfilled its duty under ICWA when it contacted the tribe K.A. identified and sent notice to the BIA. The Salinas Tribe replied that K.A.'s mother was not a member. The BIA did not respond to CWS's initial inquiry. CWS was not required to make further inquiries.

Parents unable to reunify with their children have already caused the children serious harm; the rules do not permit them to cause additional unwarranted delay and hardship without any showing whatsoever that the interests protected by ICWA are implicated in any way.

The order is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

Anne E. Fragasso, under appointment by the Court of Appeal, for
Defendant and Appellant.

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